Supreme Court, U.S.
FILED
SEP 28 2005
OFFICE OF THE CLERK

No. 04-1329

In The

Supreme Court of the United States

ILLINOIS TOOL WORKS INC. AND TRIDENT, INC.,
Petitioners,

v.

INDEPENDENT INK, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF THE DISTRICT OF COLUMBIA AND THE STATE OF CALIFORNIA AND THE STATES OF ARIZONA, FLORIDA, IOWA, LOUISIANA, MARYLAND, MASSACHUSETTS, MISSOURI, OHIO, TENNESSEE, UTAH, WEST VIRGINIA AND WYOMING AS AMICI CURIAE IN SUPPORT OF RESPONDENT

ROBERT J. SPAGNOLETTI
Attorney General for the District of Columbia
EDWARD E. SCHWAB*
Deputy Attorney General, Appellate Division
BENNETT RUSHKOFF
Chief, Consumer and Trade Protection Section
DON A. RESNIKOFF
Senior Assistant Attorney General
ANIKA COOPER
Assistant Attorney General
441 4th Street, NW, 450N
Washington, DC 20001
(202) 727-3500
Counsel for the District of Columbia
*Counsel of Record

BILL LOCKYER
Attorney General of the State of California
RICHARD M. FRANK
Chief Deputy Attorney General

TOM GREENE
Chief Assistant Attorney General
KATHLEEN FOOTE
Senior Assistant Attorney General
ANN MARIE MARCIARILLE
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 622-2221
Attorneys for the State of California

TERRY GODDARD
Attorney General
State of Arizona
1275 West Washington
Phoenix, AZ 85007-2926

CHARLES J. CRIST, JR.
Attorney General of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050

THOMAS J. MILLER
Iowa Attorney General
1305 E. Walnut Street,
Second Floor
Des Moines, Iowa 50319

CHARLES C. FOTI, JR.
Attorney General
State of Louisiana
1885 N. 3rd Street
Baton Rouge, LA 70802

J. JOSEPH CURRAN, JR
Attorney General of Maryland
200 Saint Paul Place
Baltimore, MD 21202

THOMAS F. REILLY
Attorney General of
Massachusetts
One Ashburton Place
Boston, MA 02108

JEREMIAH W. (JAY)
NIXON
Attorney General of Missouri
Supreme Court Building
207 West High Street
Jefferson City, MO 65101

JIM PETRO
Attorney General
State of Ohio
30 E. Broad Street, 17th Floor
Columbus, OH 43215

PAUL G. SUMMERS
Attorney General & Reporter
for the State of Tennessee
P.O. Box 20207
Nashville, TN 37202-1026

MARK L. SHURTLEFF
Utah Attorney General
Utah State Capitol Complex
East Office Bldg., Suite 320
Salt Lake City, Utah 84114-
2320

DARRELL V. MCGRAW,
JR.
Attorney General of West
Virginia
Office of the Attorney
General
State Capitol, Room 26-E
Charleston, WV 25305

PATRICK J. CRANK
Attorney General
State of Wyoming
123 State Capitol
Cheyenne, WY 82002

QUESTION PRESENTED

Whether, in an action under Section 1 of the Sherman Act, 15 U.S.C. § 1, alleging that the defendant engaged in unlawful tying by conditioning a patent license on the licensee's purchase of a non-patented good, the plaintiff must prove as part of its affirmative case that the defendant possessed market power in the relevant market for the tying product, or whether market power instead is presumed based solely on the existence of a patent on the invention embodied in the tying product.

TABLE OF CONTENTS

	Page
INTEREST OF THE AMICI CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. This Court Should Permit Flexible Use of the *Loew's* Rebuttable Presumption	3
A. Requiring Full-Blown Proofs to Establish Market Power in Every Patent Tying Case Creates a Needlessly Great Burden on Plaintiffs and the Courts	3
B. There are Reasonable Options for this Court Short of Requiring Full-Blown Proofs of Market Power in Every Patent Tying Case	5
C. An Appropriately Limited Rebuttable Presumption is Fair	8
II. Precluding Reasonable Court Use of the Rebuttable Presumption Will Put Undesirable Burdens on Government Antitrust Enforcers	11
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
CASES	
California Dental Ass'n v. FTC, 526 U.S. 756 (1999)	5
Digidyne Corp. v. Data General Corp., 734 F.2d 1336 (9th Cir. 1984)	6
Federal Trade Commission v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411(1990)	4
Hamdi v. Rumsfeld, 542 U.S 507, 602 (2004)	8
Independent Ink v. Illinois Tool Works, 210 F. Supp. 2d 1155 (C.D. Ca. 2002), *reversed in part*, 396 F.3d 1342 (Fed. Cir. 2005)	passim
Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2 (1984)	3, 4, 9
United States v. Loew's, Inc., 371 U.S. 38 (1962)	passim
Susser v. Carvel Corp., 332 F.2d 505, 521 (2d Cir. 1964)	6, 7
CONSTITUTIONS, STATUTES, LAWS, AND REGULATIONS	
15 U.S.C. § 15c	1
15 U.S.C. § 1	7

MISCELLANEOUS

Areeda & Turner, Antitrust Law ¶ 305e, 305f (2002) 4, 5

Complaint, California v. Econolite Control Products Inc. (filed April 22, 2004 L.A. Sup. Ct.) 12

Department of Justice and Federal Trade Commission Antitrust Guidelines for Collaborations Among Competitors, 4 Trade Reg. Rep. (CCH) ¶ 13,161 (April 2000) 10

David Haldane, *Traffic Light Supplier Sued by State*, LA Times, April 23, 2004 at B3 12

Thomas B. Leary, Commissioner, Federal Trade Commission, Intellectual Property and Antitrust: Navigating the Minefield (May 3, 2001) 10

Christina Robb, *Drug Firm Facing Antitrust Suit, Drops its Aftercare Restrictions*, Boston Globe, June 23, 1991 at 12 12

Sandoz Pharmaceuticals Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions, 57 Fed. Reg. 36403 (1992) 12

INTEREST OF THE AMICI CURIAE

The District of Columbia and the State of California, along with other amici states listed on the front cover (collectively "the States"), by their attorneys general, file this brief as friends of the Court on behalf of Respondent, Independent Ink., Inc. ("Independent Ink"). The attorneys general, as the chief law enforcement officials for their respective states and the District of Columbia, enforce both federal and state antitrust laws and, thus, have a strong interest in the issues that this case raises before the Court. Specifically, the States have a profound interest in ensuring that the federal antitrust laws are interpreted in harmony with sound antitrust policy and relevant judicial precedent.

In their capacities as *parens patriae*, the states are empowered to protect consumers from violations of the federal antitrust laws. *See* 15 U.S.C. § 15c. The attorneys general represent the states in this capacity, as well as representing state government entities, agencies and political subdivisions that purchase vast quantities of patented and non-patented products and services.

SUMMARY OF ARGUMENT

Petitioners' proposed rule would increase the potential for patent holders to engage in anticompetitive tying of patented products and processes to other products and services. Petitioners ask this Court to "overturn the market power presumption and require that a plaintiff in a patent tying case . . prove as part of its affirmative case that the defendant actually possesses the requisite market power." Pet. Brief at 2-3. According to Petitioners, full-blown market power proofs are the only way that plaintiffs should be able to establish that a defendant actually has market power in a patent tying case.

Amici states urge this Court to retain a rebuttable presumption of market power for patent tying cases, while providing guidance to lower courts as to when and how to apply the presumption. Amici states believe that lower courts should apply appropriate weight to initial market power proofs presented by plaintiffs in patent tying cases, and, when justified, employ burden-shifting presumptions. That common sense approach would be similar in practice to the "quick look" doctrine under the rule of reason, which allows courts to short-cut full-blown market power analysis when particular facts make it easy to ascertain that a practice is anticompetitive. Indeed, it would be anomalous if common sense stream-lining of market power proofs were permitted in rule of reason cases, but forbidden in the *per se* context of patent tying cases. This Court's requirements for market power proofs in *per se* patent tying cases should not be more burdensome than in rule of reason cases.

This Court should affirm the Federal Circuit decision and direct lower courts that application of a rebuttable presumption of market power should resemble the "quick look" doctrine of rule of reason cases. Flexible use of a rebuttable presumption may be triggered by plaintiff's initial showing of the existence of a patent in combination with one or more other factors strongly indicating market power. This approach would streamline market power analysis in those patent tying cases where the existence of market power is more likely.

Therefore, amici states file this brief in support of affirmance of the Federal Circuit's opinion on the grounds that the rebuttable presumption of market power can be an appropriate and efficient judicial burden-shifting tool in certain patent tying cases.

ARGUMENT

I. THIS COURT SHOULD PERMIT FLEXIBLE USE OF THE *LOEW'S* REBUTTABLE PRESUMPTION

A. Requiring Full-Blown Proofs To Establish Market Power In Every Patent Tying Case Creates a Needlessly Great Burden on Plaintiffs and the Courts

To establish that a tying arrangement is a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, a plaintiff is required to show: (1) that there are two distinct products or services, (2) the sale of the tying product is conditioned upon the purchase of the tied product, (3) the seller has market power in the tying product, and (4) the tied product involves a "not insubstantial" amount of interstate commerce. *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12-18 (1984). This Court has defined "market power" in this context as the ability to "force a purchaser to do something that he would not do in a competitive market," i.e., to purchase a tied product that the purchaser either does not want or does not wish to buy from the tying firm. *Id.* at 14.

In United States v. Loew's Inc., 371 U.S. 38, 45-46 (1962), the Supreme Court held that, in the context of Section 1 tying claims, "[t]he requisite economic power is presumed when the tying product is patented or copyrighted." The Court reasoned that "the existence of a valid patent on the tying product, without more, establishes a distinctiveness sufficient to conclude that any tying arrangement involving the patented product would have anticompetitive consequences." *Id.* at 46.

As the Federal Circuit explained in the decision below, the requirement of proving "forcing" or "market power" in cases

not involving intellectual property necessitates a definition of the market in which such power is alleged to exist and shown to have an "actual adverse effect on competition." 396 F.3d 1342, 1347 (citing *Jefferson Parish Hospital Dist. No. 2 v. Hyde*, 466 U.S. 2, 29-31 (1984)). Such proof typically requires the acquisition of expensive data, the use of an economist, and the ability to exclude virtually all possibilities that a defendant's market power does not adversely affect competition.

This Court has recognized the "enormous complexities" inherent in defining relevant markets and proving market power. *Federal Trade Commission v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 430-31 (1990) (citing R. Bork, The Antitrust Paradox 269 (1978)); *see also* Areeda & Turner, Antitrust Law ¶ 305e (2002) ("Often one of the most costly elements in antitrust litigation is delineation of the relevant market and another is the measure of actual anticompetitive effects."). Imposing complex and expensive proof burdens concerning market power in all patent tying cases would mean that many plaintiffs who could ultimately succeed in proving market power might be deterred from even bringing cases, due to the sheer expense and complexity of the litigation. Enforcement of patent tying prohibitions might well be limited to cases brought by the federal antitrust agencies, those state attorneys general with significant resources to devote to antitrust enforcement, or very well-funded private plaintiffs.[1] As a result, much plainly anticompetitive patent tying could simply go unchecked.

---

[1] Petitioner's portrayal of a requirement of full-blown market power analysis in all patent tying cases as a litigation cost-saving mechanism rings hollow with any plaintiff that has borne the expense of the expert economic testimony needed to present a full-blown market power analysis. The application of a rebuttable presumption of market power as urged by amici states is relatively inexpensive and straightforward.

B. There are Reasonable Options for this Court Short of Requiring Full-Blown Proofs of Market Power in Every Patent Tying Case

Petitioner and other amici make some creditable arguments that the application of the *Loew's* presumption is not appropriate in all patent tying cases. However, it does not follow from the conclusion that a bright-line rebuttable presumption of market power is inappropriate in some cases, that the sole option remaining for the Court is to require all plaintiffs to engage in a full-blown market power analysis in every patent tying case. Rather, there are many methods by which this Court can retain the presumption while respecting the rights of intellectual property holders. Such a balancing of competing interests is no rarity in antitrust jurisprudence, an area of the law which "is filled with presumptions."[2]

We respectfully suggest that this Court direct that where plaintiffs in patent tying cases provide sufficient initial evidence of market power, lower courts need not engage in full-blown analysis of market power, but may instead use a "quick look" approach, similar to that used under the rule of reason. *California Dental Ass'n v. FTC*, 526 U.S. 756 (1999). As Justice Souter stated there, "quick-look analysis carries the day when the great likelihood of anticompetitive effects can easily be ascertained." *Id.* at 770. As indicated earlier, it would be anomalous if expeditious analysis of market power issues were permitted in rule of reason cases, but forbidden in the *per se* context of patent tying cases.

---

[2] "Some [presumptions] are very firm and admit of very few exceptions. Some allow more exceptions. . . . . Whether formal or informal, intense or weak, fixed or rolling, such presumptions are the means by which we reach intelligible and consistent conclusions in the uncertain world of antitrust." Phillip Areeda & Donald F. Turner, Antitrust Law ¶ 305f (2002).

There are practical ways for this Court to guide lower courts in the flexible use of the market power rebuttable presumption. For example, evidence sufficient under a "quick look" to trigger the *Loew's* presumption of market power could include the factors suggested by the Ninth Circuit in its *Digidyne Corp. v. Data General Corp.* decision. 734 F.2d 1336 (9th Cir. 1984). In *Digidyne*, the court considered whether (1) there was any appreciable number of consumers who were locked into the tying product, (2) whether the tying product was unique in the marketplace, (3) whether the tying product was more appealing to consumers and viewed as superior to its closest competitors, and (4) whether a competing product could be produced without infringing upon the tying product's patent. Other potential indicia of market power could include a substantial differential in price or conditions of sale between the patented product and other products providing similar functionality. A plaintiff that can establish both the fact of defendant's patent and at least one additional factor tending to show market power would be entitled to the benefit of the *Loew's* presumption.

Proof of one or more of "plus" factors, in combination with a patent, could signal to a court that the particular tying arrangement at issue might well have a negative impact on consumers, and justify application of a rebuttable presumption. This quick look "patent plus" factor test would allow courts to identify those cases where full-blown market power analysis is not necessary to reach the conclusion that market power exists.

Under the "patent-plus" approach, if a plaintiff establishes a presumption of market power based on the existence of the patent plus one other factor tending to show market power, the burden would then shift to the defendant to rebut this presumption and "to show that in the entire factual setting . . the patent does not create the market power requisite to illegality of the tying clause. . ." *Susser v. Carvel Corp.*, 332

F.2d 505, 521 (2d Cir. 1964) (citing The Report of the Attorney General's Committee to Study the Antitrust Laws (1955), 238). As the Federal Circuit stated below, the presumption could be rebutted "by expert testimony or other credible economic evidence of the cross-elasticity of demand, the area of effective competition or other evidence of lack of market power." 396 F.3d at 1352.

The facts in this case provide a good example of how a flexible presumption of market power could be applied in order to allow courts to reach correct results in an efficient manner. Briefly stated, Respondent Independent Ink is an aftermarket manufacturer of specialty inks for use in various inkjet printing applications. Independent Ink developed an ink specifically designed for use in Petitioner Trident-ITW's ("ITW") patented piezoelectric inkjet print-head systems. However, as a condition of sale, ITW's contract requires all purchasers of its print-heads to buy all ink supplies exclusively from ITW. That is, ITW ties the sale of its patented inkjet printers to its non-patented inks.

Respondent alleged that the ITW practice constituted an illegal *per se* tie under Section 1 of the Sherman Act, 15 U.S.C. § 1.[3] At summary judgment, Respondent cited only one undisputed fact – that the Petitioners' print-head was patented and a license to the print-head was preconditioned upon an agreement that licensees purchase all ink requirements from the Petitioner. 210 F. Supp. 2d 1155, 1160 (C.D. Ca. 2002). The District Court granted summary judgment to Petitioners on the grounds that the Respondent was not entitled to a presumption of market power and had not put forth proof of ITW's market power. When the Court of Appeals for the Federal Circuit reversed the District Court's Section 1 holding, it held that

[3] Respondent also alleged that the tie violated Section 2 of the Sherman Act.

Respondent was entitled to a presumption that ITW had market power in its patented print-head system, based upon the Court's *United States v. Loew's Inc.* decision.

Should this Court modify the *Loew's* presumption to require a showing of a plus factor in addition to the patent, the remand instructions should provide an opportunity for the Respondent to provide sufficient proof of a plus factor. For example, Respondent may be able to offer testimony to corroborate the Federal Circuit's description of Trident's print-head as an invention that "overcomes the usual complexity and expense" associated with other competing devices. 396 F.3d at 1345.

C. An Appropriately Limited Rebuttable Presumption is Fair

The rebuttable presumption urged by amici states does not inhibit intellectual property holders from seeking to protect their inventions. Nor is a rebuttable presumption a premature conclusion about whether a given patent has conferred market power. Rather, a rebuttable presumption is a mere burden shifting device.[4]

In support of its argument for eliminating the *Loew's* presumption, Petitioner points mostly to the legal right of patent holders to protect the inventions that they developed and to profit from the monopoly that is justly due under intellectual property laws. Court use of a burden shifting presumption does not deprive patent holders of their legitimate rights. The

---

[4] This Court consistently recognizes the virtue of rebuttable presumptions, even in cases where constitutional due process and liberty are at stake. See, e.g., *Hamdi v. Rumsfeld*, 542 U.S 507, 602 (2004) ("[T]he Constitution would not be offended by a presumption in favor of the Government's evidence, so long as that presumption remained a rebuttable one and fair opportunity for rebuttal were provided").

antitrust tying offense as defined in this Court's *Jefferson Parish* decision involves strategic, manipulative, and anti-competitive use of patents and patent licenses that forecloses competition in product markets that do not include the patented products. Such conduct is generally unprotected by patent laws.

Petitioner cites studies that purport to demonstrate that most patents do not, in fact, convey market power. Pet. Brief at 25-26. But even if it is true that some 95% of patents do not result in a marketed product or royalty payments, the mere fact that a particular patent is involved in patent tying litigation means that the particular patent is one of the 5-10% of patents which has resulted in a marketed product. Most important, knowing the percentage of patents that do not get to market sheds little light on proper antitrust treatment of patents that do get to market, particularly the evidentiary issue of the extent of proof required to establish market power in tying cases.

Analysis of evidentiary issues in tying cases is not advanced by Petitioner's proclamation that all patents have only potential market power and that all tying is efficient and so must be pro-competitive. What must be true is that some, but not all, patents confer actual market power and some, but not all, patent tying is harmful to consumer welfare. The goal of the courts then must be to efficiently identify those patent ties that are anticompetitive within the meaning of *Jefferson Parish* and stop them. As discussed above, the most efficient way for the courts to do that is not through full-blown market power analysis in every case. Rather, where the strength of facts initially presented by plaintiffs makes it appropriate, the courts should require patent tying firms to take on the evidentiary burden of demonstrating why a particular tie is competitively neutral or procompetitive.

Concerns have been expressed by intellectual property holders such as amicus Pfizer Inc., which argues that bundled patent licensing is critical to the drug development partnerships commonly used to bring innovative medicines to market. *See* Pfizer Amicus Brief at 4-5. However, a flexibly applied presumption of market power in patent tying cases neither invalidates pro-competitive arrangements nor makes them particularly more likely to be challenged by antitrust plaintiffs. Defensible tying arrangements, those with benign effects or procompetitive aspects, will be upheld by the courts regardless of whether there is a rebuttable presumption of market power. In cases where a rebuttable presumption of market power is applied, patent tying cases would remain fact-specific inquiries that would not, in competent fact- finder's hands, render arrangements that benefit consumers illegal. It is likely that legitimate cooperative research and development arrangements would easily survive a patent tying challenge claim (assuming there were a qualified private plaintiff with standing to bring such a claim) and are, in any event, given special protection under various antitrust doctrines and statutes. *See, e.g.*, Department of Justice and Federal Trade Commission Antitrust Guidelines for Collaborations Among Competitors, 4 Trade Reg. Rep. (CCH) ¶ 13,161 (April 2000); Thomas B. Leary, Commissioner, Federal Trade Commission, Intellectual Property and Antitrust: Navigating the Minefield (May 3, 2001) available online at http://www.ftc.gov/speeches/leary/ipspeech.htm ("There has never been an antitrust prosecution of a pure research joint venture, without collateral restraints.").

II. PRECLUDING REASONABLE COURT USE OF THE REBUTTABLE PRESUMPTION WILL PUT UNDESIRABLE BURDENS ON GOVERNMENT ANTITRUST ENFORCERS

State antitrust enforcers expend considerable investigation and litigation resources seeking to protect both state agencies and the consumers they serve from anticompetitive business arrangements. In recent years, patent tying complaints have been relatively rare, even as state attorneys general have become more active in antitrust enforcement overall.[5] The most likely reasons for the lack of patent tying cases include the existence of the *Loew's* presumption and the fact that there is little justification for patent tying in many situations.

The early 1990's case against Sandoz Pharmaceutical Corporation is an example of the harm that patent tying can cause, and the need to protect efficient government prosecution of such matters. Several dozen states and the District of Columbia filed suit against Sandoz and Caremark for allegedly tying the purchase of Sandoz's patented schizophrenia medication clozapine to a Caremark monitoring service that checked patients for a potentially fatal condition that could be a side effect of the drug. *In re Clozapine Antitrust Litigation*, MDL 874 (N.D. Il. 1992). The monitoring services that Sandoz tied to the purchase of clozapine could have been provided by any number of pharmacies, laboratories, state agencies, or even the patients' own physician. In response to the litigation brought by the states and class counsel and an investigation by the Federal Trade Commission, Sandoz and

---

[5] For example, the Office of the California Attorney General, recipient of hundreds of complaints about all manner of fair competition concerns each year, has opened only one investigation involving patent tying concerns in the last five years.

Caremark discontinued the tie and began to sell clozapine without requiring that patients also purchase monitoring. *See Sandoz Pharmaceuticals Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions*, 57 Fed. Reg. 36403 (1992); Christina Robb, *Drug Firm Facing Antitrust Suit, Drops its Aftercare Restrictions*, Boston Globe, June 23, 1991 at 12.

The State of California's recent case against Econolite Control Products, Inc. also illustrates the harm that patent tying can inflict, and the need to preserve efficient prosecution. *See* Complaint, California v. Econolite Control Products Inc. (filed April 22, 2004 L.A. Sup. Ct.); *see also* David Haldane, *Traffic Light Supplier Sued by State*, LA Times, April 23, 2004 at B3. Econolite manufactures a traffic controller that is specified in many public works projects. While its prevalence in California public works projects alone gives it market power, once a system uses one type of controller, it is virtually "locked in" to using that controller for an entire system or risk losing both functionality and training expenditures. Econolite tied the purchase of its patented controllers to non-patented items used in public works projects such as light poles and emergency vehicle system products. The harm is, among other things, that the patent's exclusionary power kept Econolite's competitors from offering a controller or other parts compatible with Econolite's traffic controller system.

One can envision a hypothetical situation where a pharmaceutical company requires a state government purchaser to purchase a package of products in order for the state to obtain one of the company's popular products. Courts certainly do not need a full-blown market power analysis to understand the dangers of this type of arrangement and the risk of public dollars going to support supra-competitive pricing. Critics may argue that this scenario is unlikely, but they fail to take

into account that it may be the *Loew's* presumption that now curbs this type of behavior. Justice will be served if state antitrust prosecutors are able to efficiently investigate and prosecute such a case. Permitting application of the *Loew's* presumption in appropriate cases will further that goal.

CONCLUSION

For the reasons stated, amici states urge this Court to affirm the decision of the Federal Circuit and to provide guidance to the lower courts concerning application of the *Loew's* presumption to appropriate patent tying cases.

Respectfully submitted,

ROBERT J. SPAGNOLETTI
Attorney General for the District of Columbia
EDWARD E. SCHWAB*
Deputy Attorney General, Appellate Division

BENNETT RUSHKOFF
Chief, Consumer and Trade Protection Section
DON A. RESNIKOFF
Senior Assistant Attorney General
ANIKA COOPER
Assistant Attorney General
441 4th Street, NW, 450N
Washington, DC 20001
(202) 727-3500

Counsel for the District of Columbia

BILL LOCKYER
Attorney General of the State of California
RICHARD M. FRANK
Chief Deputy Attorney General

TOM GREENE
Chief Assistant Attorney General
KATHLEEN FOOTE
Senior Assistant Attorney General

ANN MARIE MARCIARILLE
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612
(510) 622-2221

Attorneys for the State of California

*Counsel of Record

September 28, 2005

TERRY GODDARD
Attorney General
State of Arizona
1275 West Washington
Phoenix, AZ 85007-2926

CHARLES J. CRIST, JR.
Attorney General of Florida
The Capitol PL-01
Tallahassee, FL 32399-1050

THOMAS J. MILLER
Iowa Attorney General
1305 E. Walnut Street,
Second Floor
Des Moines, Iowa 50319

CHARLES C. FOTI, JR.
Attorney General
State of Louisiana
1885 N. 3rd Street
Baton Rouge, LA 70802

J. JOSEPH CURRAN, JR
Attorney General of
Maryland
200 Saint Paul Place
Baltimore, MD 21202

THOMAS F. REILLY
Attorney General of
Massachusetts
One Ashburton Place
Boston, MA 02108

JEREMIAH W. (JAY)
NIXON
Attorney General of Missouri
Supreme Court Building
207 West High Street
Jefferson City, MO 65101

JIM PETRO
Attorney General
State of Ohio
30 E. Broad Street, 17th Floor
Columbus, OH 43215

PAUL G. SUMMERS
Attorney General & Reporter
for the State of Tennessee
P.O. Box 20207
Nashville, TN 37202-1026

MARK L. SHURTLEFF
Utah Attorney General
Utah State Capitol Complex
East Office Bldg., Suite 320
Salt Lake City, Utah 84114-
2320

DARRELL V. MCGRAW,
JR.
Attorney General of West
Virginia
Office of the Attorney
General
State Capitol, Room 26-E
Charleston, WV 25305

PATRICK J. CRANK
Attorney General
State of Wyoming
123 State Capitol
Cheyenne, WY 82002